IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2046 OF 2006

Madhukar Omkar Borale ... Petitioner

versus

The Vice Chairman and Managing Director,
M.S.R.T.C. and ors. ... Respondents

Mr. Mihir Desai for the petitioner.
Mr. G.S. Hegde, instructed by M/s. Hegde & Associates, for respondent Nos. 1 and 2.
Ms. S.M. Dandekar, Assistant Government Pleader, for respondent No.3.

CORAM: **SWATANTER KUMAR, C.J.** &
S.C. DHARMADHIKARI, J.

DATE: **JUNE 26, 2007**.

P.C.

The petitioner has approached this Court under Article 226 of the Constitution of India praying that a writ be issued to the respondents with a direction to promote the petitioner to the post of Assistant Personnel Officer in the respondent-Corporation with effect from 23rd July, 1997, and to give all consequential benefits to the petitioner. In view of the course we propose to adopt, it is not necessary for us to notice the factual matrix of the case in a greater detail. Suffices it to note that the petitioner is an employee of the respondent-Corporation

and had appeared in a written test which was for the purpose of promotion to the post of Assistant Personnel Officer. The test was held in accordance with the rules. It is commonly conceded that nearly 45 candidates appeared in the examination out of which 16 were declared passed. The petitioner is one of the passed candidates. However, subsequently, it came to the notice of the respondents that there were certain over writings in the papers and resultantly vide their letter dated 18th November, 2005, the Joint Managing Director of the Corporation decided to cancel the result. The petitioner aggrieved from this action of the respondents approached this Court.

2. As we have already stated, there is no dispute to the fact that there are certain over writings on seven papers out of the 16 papers of the candidates who have passed and that persuaded the respondent authorities and thereafter their Board to take a final view in regard to the cancellation of the result. The Board in its wisdom thought it proper to only get the papers having over writings reevaluated and declined the administrative decision of the Joint Managing Director to cancel the result. The short question that we are called upon to decide is whether this decision is just and fair, besides being in accordance with the Rules.

3. Once it is conceded that there is over writing on the papers, that itself is a sufficient indication that there has been tampering in the evaluation of the papers and ex facie would be unfair to all the candidates. No vested right is created in any person merely because he passes an examination. The examination which is not in consonance with the basic canons of fairness cannot be an instrument in deciding the merit of the candidates. The purpose of holding the written examination for promotion to the post of Assistant Personnel Officer is obviously to give advantage to the candidates of best merit and not the candidates who could be given some favours by the examiners or in the department, as the case may be. It will be further adding premium on unfairness if only seven papers on which there are over writings are reevaluated by the new examiners and the other candidates whose marking might not have been done properly to give advantages to these seven persons would continue to be in the disadvantageous position. This cannot be permitted in law. Every administrative action should essentially be in the field of fair play and any element of arbitrariness or patent irregularity or illegality opposed to the basic rule of law would frustrate the entire action of the respondents.

4. Having heard the learned counsel for the parties, we are of the considered view that there are only 45 papers which are to be reevaluated and the ends of justice would be met only when all papers are reevaluated rather than just the seven papers on which, according to the respondents, there are over writings or tampering in the answer-sheets.

5. For the reasons aforestated, obviously before us the issue of cancellation of result vide letter dated 18th November, 2005, is not pressed as the respondents themselves have taken a decision not to cancel the result, as a whole. Therefore, we dispose of this petition with a direction to the respondents to reevaluate all the 45 cases and prepare a fresh merit list and disclose the same to all the candidates within six weeks from today. We expect that the entire papers would be examined by the new examiners within six weeks from today. The petition is disposed of in the above terms, while leaving the parties to bear their own costs.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.